

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*J. Randall Evans, Secretary*

*Board of Appeals*  
*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*  
*Telephone: (301) 333-5032*

*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

— DECISION —

	Decision No.:	1034-BR-89
	Date:	Nov. 24 , 1989
Claimant: Hans J. Lee	Appeal No.:	8907239
	S. S. No.:	
Employer: Litton Systems, Inc. ATTN: Andrew Fox, Manager Employee Relations	L O. No.:	7
	Appellant:	EMPLOYER

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the law.

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—NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

December 24, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

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— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The Board has carefully reviewed the tape of the hearing and concludes that the claimant had neither "good cause" nor "valid circumstances" for leaving his employment.

The claimant worked for eight years for this employer. He was performing duties as a mechanical engineer, earning \$47,000 per year at the time of his separation from work on March 17, 1989. His title was Senior Member of the technical staff.

Because of staff reductions and reorganization, the claimant was transferred on August 29, 1987 from the mechanical engineering division to the design division. His title remained the same. His pay remained the same. His duties remained the same - in fact, he was primarily doing the very same projects he had been working on in the mechanical engineering division. The employer transferred him primarily because the mechanical engineering department's budget had been cut, and the employer wished to pay him out of the design division's budget. He remained under the same supervision and did the same work.

The only detriment suffered by the claimant was the change in the promotional structure. In the mechanical engineering division, the claimant had a possibility of being promoted to a Principal Staff position without furthering his education. In the design division, the claimant would need further education in order to qualify for the promotion. The employer, however, had a policy of creating positions wherever needed in order to promote staff members when necessary.

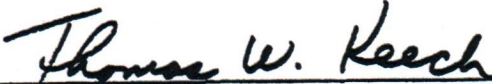
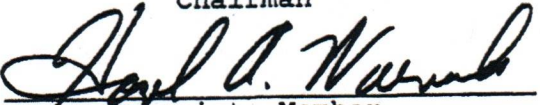
The Hearing Examiner concluded that the different promotional structure in the drafting department amounted to a "valid circumstance" for quitting the job. The Board disagrees, for the following reasons. The possibility of promotion was only hypothetical in any case, as there had been no promise of a promotion in either department. In fact, the company had suffered severe setbacks and had laid off over 1,000 people; under such conditions, the assumption that a promotion would probably have been forthcoming seems unwarranted. Promotions in the design division were not totally blocked, but required more educational advancement. Finally, the company's promotional policies were flexible, and the company remained capable of awarding a promotion if it felt that it was appropriate to do so.

The change in the potential promotional structure is simply not significant enough to amount to a "valid circumstance." Since the conditions of employment were otherwise almost exactly the same, neither good cause nor valid circumstances can be found, and the maximum penalty must be imposed.

DECISION

The claimant voluntarily quit his job, without good cause or valid circumstances, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning March 12, 1989 and until he becomes re-employed, earns at least ten times his weekly benefit amount, and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

  
Chairman  
  
Associate Member

K:HW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Gates, McDonald Corporation

UNEMPLOYMENT INSURANCE - COLLEGE PARK



 **Maryland**  
**Department of Economic &  
Employment Development**

*William Donald Schaefer*  
Governor  
*J. Randall Evans*  
Secretary

1100 North Eutaw Street  
Baltimore, Maryland  
21201

(301) 333-5040

**-DECISION-**

Date: July 26, 1989  
Decision No.: 8907239  
S.S. No.:  
L.O. No.: 007  
Appellant: Employer  
Claimant: Hans J. Lee  
Employer: Litton Systems, Inc.  
c/o Gates, McDonald Corp.

**Issue:**

Whether the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law. Whether there is good cause to reopen this dismissed case, within the meaning of COMAR 24.02.06.02(N).

**— NOTICE OF RIGHT OF FURTHER APPEAL —**

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN AN EMPLOYMENT SECURITY OFFICE OR WITH THE APPEALS DIVISION, ROOM 818, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201. EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

August 10, 1989

**— APPEARANCES —**

**FOR THE CLAIMANT**

Hans J. Lee - Present

**FOR THE EMPLOYER**

Andrew Fox, Manager  
of Employee  
Relations, Howard  
Repass, Manager of  
Engineering Marty  
Martinez, Section  
Manager and Mitchell  
Fink, Personnel  
Administrator  
Gates, McDonald,  
Robert Wallace, Esq.

**FINDINGS OF FACT**

A benefit determination mailed to the parties provided that the

last day to file a timely appeal was June 9, 1989. In this case, the appeal was postmarked June 8, 1989. A copy of the appeal letter was presented at the hearing and is credible. Therefore, the appeal is deemed timely.

The claimant's first day of work was September 24, 1981 and his last day was March 17, 1989. He worked full-time as a mechanical engineer, earning \$47,000.00 per year.

The claimant has been employed full-time, since July 5, 1989 by Westinghouse, at their Atlantic Design Division.

Because of a lack of work in 1987 and 1988, the claimant was transferred into a different department. He was considered a designer/drafter as opposed to a mechanical engineer as of August 29, 1987. This slightly affected the claimant's promotability, as the position of "principal member" existed in the mechanical engineering division, but did not in the design division. The claimant accepted his transfer into the design division because his superior, Mr. Henderson, Director of Engineering, told him that he would be placed back into his former position when the work load increased. Nevertheless, the claimant was always assigned a full work load of engineering duties and his tasks were charged to the engineering department. In the beginning of March 1989, the claimant, out of frustration, went to Mr. Henderson and requested that he be placed back in engineering, but his superior told him nothing definite. The claimant had also gone to his supervisor, Mr. Martinez, who told the claimant he could not help him. The claimant chose not to approach the Department of Personnel because he had heard from co-workers that to do so would not accomplish anything.

The weight of the credible evidence reveals that the claimant could have filed a grievance but chose not to, and his job title and his duties never actually changed, nor did his rate of pay.

#### CONCLUSIONS OF LAW

Article 95A, Section provides that an individual shall be disqualified from benefits where his unemployment is due to leaving work voluntarily, without good cause, arising from or connected with the conditions of employment or actions of he employer. The facts established in the instant case do not demonstrate such good cause under the Law. However, Section 6(a) provides that a reduced disqualification may be imposed where the separation is precipitated by (1) a substantial cause connected with the conditions of employment or (2) another cause of such a



necessitous or compelling nature that the claimant had no reasonable alternative but to leave the employment. The facts in this case demonstrate such valid circumstances, and therefore, a reduced disqualification is appropriate.

In the present case, the claimant complained to two of his superiors and was given no assurances that his dilemma would be remedied. He, therefore, has valid circumstances in choosing to separate himself from the employment.

In Premcik v. Roper Eastern (141-BR-83), the Board of Appeals conferred upon the Appeals Division its own jurisdiction granted pursuant to Article 95A, Section 7(c)(3) to rule upon the issue of timeliness of appeal as well as the issue of good cause in filing a late appeal. In the instant case the evidence will support a conclusion that the claimant filed a timely appeal for reasons which constitute good cause under the provisions of Article 95A, Section 7(c)(3).

#### DECISION

It is held that the appellant filed a valid and timely appeal within the meaning and intent of Article 95A, Section 7(c)(3).

It is held that the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receipt of benefits from the week beginning March 12, 1989 and the four weeks immediately following.

The determination of the Claims Examiner below is hereby reversed.

*Judy-Lynn Goldenberg*  
Judy-Lynn Goldenberg  
Hearing Examiner

Date of Hearing: July 13, 1989  
JLG/km  
Specialist ID: 07218/5108,5109  
Copies mailed on July 26, 1989 to:

Claimant  
Employer  
Unemployment Insurance - College Park - (MABS)

Robert G. Wallace  
Attorney at Law